

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael King	Team: Team # 4	CCRB Case #: 200301218	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 02/15/2003 3:00 PM	Location of Incident: Between 53 & 54 St & 2nd Ave, Manhattan	Precinct: 17	18 Mo. SOL 8/15/2004	EO SOL 8/15/2004	
Date/Time CV Reported Tue, 02/18/2003 12:35 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 02/18/2003 12:35 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Moscioni	14096	906879	MOUNTED
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT John Driscoll	02694	895094	MOUNTED
2. POM Patrick Eldon	08975	901506	MOUNTED
3. POF Deborah Knee	10620	916010	MOUNTED
4. POM James Delmonico	29728	880825	MOUNTED
5. POM John Giacona	27703	901599	MOUNTED
6. POM Robert Reekie	31851	904866	MOUNTED
7. POM Wayne Chin	01368	900140	PBMS TF

Officer(s)	Allegation	Investigator Recommendation
A. POM Joseph Moscioni	Force: PO Joseph Moscioni rode his horse into a crowd of demonstrators, bumping into § 87(2)(b)	
B. An officer	Force: An officer used physical force against § 87(2)(b)	
C. An officer	Force: An officer struck § 87(2)(b) with a nightstick.	

Synopsis

This complaint stems from the anti-war rally that took place on February 15th, 2003 at the United Nations headquarters, which received extensive press coverage. As such, the case was determined to be sensitive and placed on the sensitive case list. § 87(2)(b) planned to attend an anti-war demonstration with a group of her friends (for whom she refused to identify or provide contact information). While walking north on 2nd Avenue, the group came to a stop at the corner of 54th Street and 2nd Avenue, where uniformed police officers had set up a plastic barricade at approximately 3PM. More protesters arrived on the scene, filling up the street and Mounted Unit officers arrived on the scene to disperse the crowd. § 87(2)(b) alleged that the officers, specifically PO Joseph Moscioni of the Mounted Unit turned his horse around and proceeded to back his horse into the crowd, bumping into § 87(2)(b) and causing her to sustain bruising to her knees. § 87(2)(b) was not seriously injured and did not seek medical attention. PO Moscioni denied backing his horse into any of the crowds that he was ordered to disperse on February 15th, 2003. § 87(2)(g) § 87(2)(b) also alleged that several officers used physical force against a male; she identified § 87(2)(b) from his arrest photograph. PO Wayne Chin arrested § 87(2)(b) for disorderly conduct at the corner of 53rd Street and 2nd Avenue at 1PM. § 87(2)(g)

Summary of Complaint

Formal Statement

§ 87(2)(b) was interviewed at the CCRB on February 28th, 2003 (Enclosure 5-5e). On February 15th, 2003, § 87(2)(b) planned to attend the anti-war rally located at 49th Street and 1st Avenue in Manhattan. She estimated that the time of the incident she is complaining about was 3 PM in the vicinity of 2nd Avenue between 53rd Street and 54th Street, specifically, the west side of the avenue. § 87(2)(b) explained that she and a large group of “pro-Palestinian” supporters carrying a banner were walking north on 2nd Avenue. As they walked north, they came upon various officers who told them to keep moving north until they reached a street that was open and would allow them to cross east to 1st Avenue. At the intersection of 54th Street and 2nd Avenue, the group came upon a plastic, mesh barricade established by uniformed officers that stretched across the avenue. § 87(2)(b) and her group of friends were right at the front. After a few minutes, the officers took down the mesh barricade and approximately 7-8 officers on horseback stood where the mesh barricade was. The officers then moved into the crowd with the horses, though the horses “refused to trample the crowd.” The horses bumped into the solid wall of people but the protesters would not move. At this, the officers turned their horses around to back into the crowd. The horses appeared to be frightened, as they brought their ears back and were kicking. The horses started jostling each other, which in turn caused them to bump into the crowd. § 87(2)(b) stated that one of the horses backed into her, with its backside right by her. She held her hands out to push the horse forward. § 87(2)(b) pleaded, “why are you doing this, this is dangerous. Please stop.” The officer on horseback turned around and said, “tell your buddies to move back, they’re the ones endangering your lives.” § 87(2)(b) stated that the officer on this horse was named, “Moscioni” with number 14096, which she read off his nameplate and helmet. § 87(2)(b) s sister – § 87(2)(b) – was present and took photographs of this officer as well as the others. § 87(2)(b) sustained a small bruise to her right knee, though she stated that this was not the reason that she was filing the complaint. § 87(2)(b) did not know if an officer or an officer on horseback caused the injury; she then stated that it was the result of the scuffle, though she could not say when she got it. She did not seek medical attention. § 87(2)(b) stated that she originally wanted to file a complaint with the American Society for the Prevention of Cruelty to Animals (ASPCA) accusing the officers of animal abuse.

§ 87(2)(b) stated that shortly after the Mounted Unit officers moved into the crowd, five police officers grabbed a small, “skinny” male with “bleach blonde” hair; she did not know his race, but speculated that he “probably wasn’t black.” He was on the ground and the officers were sitting on him with one of the officers placing his “baton” over his neck. She did not know who this person was, nor who the officers were. There was also a “big, burly Hispanic officer” who grabbed and arrested the protester. § 87(2)(b) stated that her main complaint was that the “Bloomberg administration” utilized the NYPD in order to minimize the number of protesters.

Results of Investigation

Additional Witnesses

On March 26th, 2003, § 87(2)(b) was contacted via telephone in order to determine if § 87(2)(b)'s companions were willing to provide statements. § 87(2)(b) informed the undersigned that her sister would not cooperate. § 87(2)(b) questioned whether it would be possible for the investigation to continue without additional witness statements and she was informed that the thoroughness of the investigation may be hindered if no additional witnesses provided statements. § 87(2)(b) then contacted her friend "§ 87(2)(b)" to determine if he would provide a statement. She declined to provide § 87(2)(b)' full name, his address or telephone number; and asked that the undersigned make no independent attempts to identify and/or contact him."

Photographic Array

In an attempt to identify the male victim of alleged force, § 87(2)(b) was shown a photographic array consisting of individuals arrested in the vicinity of 53rd and 54th Streets on 2nd Avenue on September 19th, 2003 (Enclosure 6-6i). She was also shown photographs of mounted officers (Enclosure 6j-6q) and foot patrol officers assigned to those intersections (Enclosure 6r-6xx). Regarding the arrested individuals, § 87(2)(b) identified the individual in photograph one – § 87(2)(b) – as the individual she recalled being tackled to the ground by a large, "rhinoceros" Hispanic male in uniform. According to § 87(2)(b), § 87(2)(b) was face down on the ground and there were officers surrounding him. § 87(2)(b) also identified the mounted officers in photographs six and eight. She specifically recalled the officer in photograph eight as being "the most aggressive, trying to ride his horse into the crowd." The officer in photograph 8 was PO Joseph Moscioni. The officer in photograph six was PO Patrick Eldon. She could not identify any of the foot officers as having been present on the date of incident. Of the officers assigned to the intersections, there were only six Hispanic males and § 87(2)(b) did not identify any of them as the subject officer.

§ 87(2)(b) Arrest Report

A copy of § 87(2)(b)'s arrest report was obtained (Enclosure 8q). He was arrested at 1PM at the intersection of 53rd Street and 2nd Avenue by PO Wayne Chin of the Patrol Borough Manhattan South Task Force. No force was indicated as being used and § 87(2)(b)'s physical condition was listed as, "apparently normal."

Attempts to reach § 87(2)(b) Canvass

Attempts to locate a telephone number for § 87(2)(b) via Verizon Telephone Directory Assistance, superpages.com, and a yahoo.com people search yielded negative results (See Investigative Action Log, Enclosure 9c). Contact letters were sent to § 87(2)(b) at the address listed on his arrest report (§ 87(2)(b)) on September 22nd, 24th, 29th, and October 1st. § 87(2)(b) never responded to any of these letters and none of the letters were returned to the CCRB, indicating that they were received as addressed. On October 21st, a canvass was conducted of the address, finding that it was an art studio. A middleaged woman who claimed her last name was § 87(2)(b) confirmed that § 87(2)(b) had previously used the studio as his address, though he no longer worked at the studio. § 87(2)(b) denied being related to § 87(2)(b) and indicated that she had no forwarding information for him. She refused to accept a final drop-off letter to pass on to § 87(2)(b) claiming that she was not in contact with him. A search of the Office of Court Administration database found no additional information pertaining to § 87(2)(b) as there was no public record of the arrest.

Officer Statement – PO Joseph Moscioni

PO Joseph Moscioni, an instructor for the Mounted Unit, was interviewed at the CCRB on June 6, 2003 (Enclosure 7-7c). On February 15th, 2003, PO Moscioni worked an overtime duty for the anti-war demonstration. Sgt. John Driscoll was his supervisor for the day. PO Moscioni had no memo book entries regarding this incident, could not recall this incident and was unclear exactly what his movements were for the day; he could only state that he primarily worked on the eastern side of Manhattan, specifically 2nd and 3rd Avenues. PO Moscioni also indicated that his group of officers on horseback were repeatedly moved from intersection to intersection in response for calls from other units. He was also not sure what other

officers he was with over the course of the day. PO Moscioni could not recall pushing forward into the crowd on 2nd Avenue between 53rd and 54th Streets. Regarding § 87(2)(b)'s allegations, PO Moscioni denied ever deliberately turning his horse and then backing the horse into the crowd. PO Moscioni explained that the horses sometimes turn around on their own, particularly in stressful situations and if the animals become frightened. He stated that this is always a possibility with such gatherings, though he denied that it happened on that day. He also denied that his horse struck a female civilian on 2nd Avenue between 53rd and 54th Streets. He denied that the female then asked, "why are you doing this? This is dangerous." He also denied telling her, "tell that to your buddies, they're the ones endangering your life." PO Moscioni recalled numerous civilians yelling at him, calling him a "fascist" among other things. He simply indicated that their job was to respond to locations that needed the mounted unit and then disperse the crowd, if need be. PO Moscioni indicated that his horse was "good" that day, meaning that he had no problems or difficulties with the animal.

Officer Statements – PO Wayne Chin

PO Wayne Chin was interviewed at the CCRB on November 13, 2003 (Enclosure 7d-7g). On February 15th, 2003, PO Chin worked from 9:45 AM to 6:20 PM covering the anti-war demonstration and his supervisor for the demonstration was Sgt. Walter Cook of the Borough Task Force. PO Chin indicated that no force was used to arrest § 87(2)(b). According to the officer, at approximately 1PM at the incident's intersection, Inspector Kenneth McGrath of PBMS and Captain Robert Chico of the Detective Bureau Special Victims Division ordered a large crowd of protesters to vacate the street, though numerous protesters refused to do this, § 87(2)(b) being one of them. Captain Chico, whom PO Chin described as a White male with medium build, dark hair and a mustache, then physically grabbed § 87(2)(b) by the arm and escorted him to a transport van parked on 53rd Street approximately 20 feet east of 2nd Avenue. The Captain handed § 87(2)(b) to PO Chin, who subsequently handcuffed § 87(2)(b) and then placed him into the transport van. PO Chin denied that several officers were involved in the arrest, and denied that any officers used nightsticks against § 87(2)(b) or that he was forced to the ground. The only officer involved in § 87(2)(b)'s apprehension was Captain Chico. § 87(2)(b) never complained of excessive force or injury to PO Chin. According to the officer, he escorted § 87(2)(b) to Manhattan Central Booking and arrived there at approximately 3 PM.

CTS Query for duplicate complaints

Of all the complaints filed regarding the February 15th, 2003 anti-war demonstration, only five (including this one) were filed regarding incidents that occurred at the intersection of 54th Street and 2nd Avenue or between 53rd and 54th Streets on 2nd Avenue. Of these complaints, only three concerned the use of the Mounted Unit: 200301197, this complaint, and 200301745. The other two complaints occurred much earlier than § 87(2)(b)'s alleged incident and do not provide any additional witnesses for her incident. 200301197 was closed, COMPLAINANT UNCOOPERATIVE while 200301745 is active but has no statements that bear on § 87(2)(b)'s incident.

Mounted Unit Training Manual

A copy of the Mounted Unit Training Manual was obtained (Enclosure 8a-8h) and reviewed. According to the Mounted Unit's training manual, the pushing of the civilians with the horses would be incident to the tactic of dispersing the crowd by walking the horses into the crowd in one of three formations: "Wedge," in which the Mounted officers form a chevron pattern; "Extended Line," whereby a single row is formed, simulating a wall; and "Box," in which the Mounted officers form a box. The training manual also recommends that Mounted officers "avoid physical contact if possible" and that they use the "minimum force necessary to control a situation."

Conclusions and Recommendations

§ 87(2)(g) PO Moscioni was working as part of the Mounted Unit for the February 15th, 2003 war protest detail. § 87(2)(b) identified PO Moscioni by a close approximation of his name and provided a picture of the officer with his shield number visible on his helmet to the undersigned (Enclosure 5b). PO Moscioni, on the other hand, did not know his whereabouts at the time of this incident, as he did not note his movements for the

day in his memo book. He also did not recall any outstanding incident at the time and/or location of this incident. He denied deliberately backing his horse into the crowd of protesters at any point that day.

Regarding the incident involving the uniformed patrol officers arresting and using force against a male with “bleach blonde” hair, § 87(2)(b) identified § 87(2)(b) in a photographic array as the victim. Attempts to reach § 87(2)(b) ended with negative results and thus, no statement was obtained from him. PO Wayne Chin, § 87(2)(b)'s arresting officer, was interviewed and credibly testified that no physical force was used against § 87(2)(b) during his arrest, as was also noted on the initial arrest report prepared on February 15th, 2003.

§ 87(2)(g)
§ 87(2)(b) explained that she felt the Mounted Unit officers mistreated the horses. § 87(2)(g) she did not seek medical treatment for her alleged injury – bruising to her knees, which was also not documented via photographs. There were no injuries to her knees at the time of her CCRB interview, which was 13 days after the incident; by her own admission, the injury was minor. § 87(2)(g)

§ 87(2)(b) did not file a complaint nor has any other complaint duplicated § 87(2)(b)'s allegations. § 87(2)(g)

§ 87(2)(g)
PO Moscioni, an instructor for the Mounted Unit, also denied that he deliberately backed his horse into the crowd of protesters or that he observed other officers do as such. He noted, however, that because of the large crowds and horses' reluctance to get trapped amidst a large crowd and all of its attendant troubles (noise, movement, etc.) that it was possible for a horse to move out of control and possibly bump into a protester. However, PO Moscioni denied this happened with his horse, stating that he felt his horse reacted very well given the circumstances.

§ 87(2)(g) PO Chin was able to recall the arrest of § 87(2)(b) and indicated that it was relatively minor. § 87(2)(g)

It should be noted that PO Chin was not listed as a subject officer. § 87(2)(g)

Allegation A. PO Joseph Moscioni rode his horse into a crowd of demonstrators, thereby causing his horse to knock into § 87(2)(b) in violation of Patrol Guide Procedure 203-11.

§ 87(2)(b) claimed that she was struck by PO Moscioni's horse when he backed his horse into the crowd. PO Moscioni denied backing his horse into any of the crowds that day and further denied observing

Patrol Guide Procedure 203-11 (Enclosure 1-1a) directs officers to use the “minimum necessary force” when effecting an arrest. Similar to this, the NYPD Mounted Unit Training Manual directs its officers to “avoid physical contact if possible,” and sternly instructs Mounted Unit officers that excessive force will not be tolerated. The training manual (Enclosure 8a-8h) also directs officers to “keep the horse’s hindquarters away from the crowd as much as possible.” § 87(2)(g)

§ 87(2)(b) alleged that approximately five uniformed officers arrested a small, skinny male of unspecified race (though she did state, “probably not Black”) with bleach-blonde hair. § 87(2)(b) claimed that the officers held the individual to the ground and that one of the officers placed a nightstick across the individual’s neck. In a photographic array, § 87(2)(b) was unable to identify any of the officers assigned to the intersection; she identified § 87(2)(b) from his arrest photograph as the victim. Attempts to reach § 87(2)(b) yielded negative results. § 87(2)(b)’s arrest report did not indicate that force was used against him and further noted that the arrest occurred much earlier (at 1:00 PM) than § 87(2)(b)’s alleged incident at 3:00 PM. PO Wayne Chin, the arresting officer of § 87(2)(b) reiterated in a formal statement that no force was used against § 87(2)(b) and he described the apprehension as one in which Captain Robert Chico escorted § 87(2)(b) out of the crowd to PO Chin, who subsequently handcuffed § 87(2)(b) without incident. § 87(2)(g)

Date: